

ANNE MILGRAM
ACTING ATTORNEY GENERAL OF NEW JERSEY
Division of Law - 5th floor
124 Halsey Street
P.O.B. 45029
Newark, New Jersey 07101
By: Joan D. Gelber
Deputy Attorney General
Tel. 973-648-2972

FILED

SEPTEMBER 14, 2006

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS
OAL DKT. NO. BDSME07016-2006N

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF LICENSE OF
MARK D. FREILICH, M.D.
TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY :

ADMINISTRATIVE ACTION
FINAL ORDER

This matter was presented to the New Jersey State Board of Medical Examiners by way of Administrative complaint filed April 26, 2006 by the Attorney General of New Jersey, by Joan D. Gelber, Deputy Attorney General. The four-Count Complaint alleged, in pertinent part, that radiologist Dr. Freilich had repeatedly issued false or grossly negligent interpretations of magnetic resonance imaging (MRI) studies of patients; that he allowed himself to be regularly employed as the Medical Director for Medscan Diagnostic Imaging although the entity was not at the time licensed to operate by the New Jersey State Department of Health and Senior Services; that he allowed Medscan to issue his reports on its letterhead although he neither held an ownership interest nor was a salaried employee of the entity. Finally, the Complaint alleged that respondent had continued to provide professional medical interpretations of radiologic studies after the expiration of his New Jersey registration to practice. The conduct was alleged to violate, variously, N.J.S.A. 45:1-21(b), (c), (d), (e) and (h); N.J.S.A. 45:9-6 and 45:9-6.1. Regulation violations were alleged under N.J.A.C. 13:35-2.5 (recodified as 13:35-2.6); N.J.A.C. 13:35-6.1(a) and (f), N.J.A.C. 13:35-6.5, N.J.A.C. 13:35-6.10(c), and N.J.A.C. 13:35-6.16(b) and (f), all as more fully set forth in the Complaint.

CERTIFIED TRUE COPY

Respondent, whose current address of record is 389 Beechmont Drive, New Rochelle, New York 10804, is represented by Michael J. Schoppmann and Donna Lee Mantel, Esqs. Respondent having filed an Answer variously admitting and denying the allegations, the matter was then transmitted to the Office of Administrative Law for hearing as a contested case.

Respondent, having consulted with his attorneys, has determined to waive his right to a plenary hearing in this matter. In the interests of amicable settlement, respondent Dr. Freilich has offered certain representations, and he and complainant Attorney General and have proposed a resolution of the matter, as set forth below.

Respondent represents that his misreadings of the imaging studies was not intentional, and he will utilize the remedial methods set forth herein to assure that such errors do not recur. He further asserts that he was unaware that, at the time he commenced employment, Medscan was unlicensed, and Dr. Freilich now recognizes his obligation to confirm an entity's legal authority and status in advance of an employment. Similarly, he states that he was unaware that use of the Medscan letterhead for his reports improperly implied a formal affiliation for professional accountability purposes, and he shall assure that such conduct does not recur in future employments. Finally, he apologizes for having continued to engage in professional practice in this State after his license had expired, and he represents that this was inadvertent.

The Board has considered Dr. Freilich's representations to the extent they serve as mitigation, and finds that the remedial measures set forth are acceptable. The Board hereby accepts his plea of *non vult* in violation of N.J.S.A. 45:1-21(b) to the extent it alleges misrepresentations, and to the allegations of the Complaint in violation of N.J.S.A. 45:1-21(c), (d), (e) and (h), and finds that the entry of this Order will adequately protect the public interest. For good cause shown,

IT IS, ON THIS 13th DAY OF SEPTEMBER, 2006

ORDERED:

1. Respondent's license shall be suspended for two years, the first six months of which shall be an active suspension, with the remainder stayed as probation. The period of active suspension shall commence on October 1, 2006.

2. Respondent shall surrender his State Controlled Drug Registration for the duration of the suspension period, and shall make prompt arrangements with the Division of Consumer Affairs Enforcement Bureau/Drug Control Unit for the lawful disposal of all Controlled Drugs in his possession or under his control in the State of New Jersey, and shall arrange for the lawful disposal of all non-CDS medications in his possession or under his control within this State. Excepted from this requirement are medications prescribed for him for a documented medical purpose by his treating physician. Notice of such prescribing for him shall be provided to the Board and updated as necessary.

3. Respondent shall assure that all New Jersey office letterhead and all prescriptions pads bearing his name are destroyed. He shall make safe and appropriate disposition of all medical equipment in his possession or under his control within this State.

4. Respondent is assessed an aggregate civil penalty of \$40,000.00 for the offenses set forth in Counts 1 through 4, pursuant to N.J.S.A. 45:1-25. Respondent shall reimburse investigative costs and fees totaling \$14,000.00, pursuant to N.J.S.A. 45:1-25(d).

5. All costs and penalties totaling \$54,000.00 shall be paid within 10 days of the entry of this Order, at the Board office at P.O. Box 183, Trenton, NJ 08625-0183.

6. If installment payments are requested, and approved by the Board for good cause shown, respondent shall pay the costs and fees in full within the first 10 days, and shall be permitted to pay the balance of the debt regarding penalty in equal monthly installments of \$1,000.00, with the first payment due on October 1, 2006 and each subsequent payment due on the first day of each month thereafter. Interest on all financial assessments shall accrue in accordance with Rule of Court 4:42-11. All payments shall be made by certified check or money order payable to the State of New Jersey. In the event that a monthly payment is not received within five days of its due date, the entire balance of the civil penalty and costs shall become due and owing. For any payments ordered in

paragraphs 4 and 5 above, which have not been paid in full within 10 days of the entry of this Order, a Certificate of Debt shall be filed pursuant to N.J.S.A. 45:1-24.

7. Prior to the end of the active suspension period and before resuming any form of medical practice on probation, respondent shall appear before a Board Committee to discuss his status and shall submit in advance to the Board proof of the following:

(a) Respondent shall have taken and have received an unconditional passing grade in Board-approved courses in medical record keeping pertinent to his practice specialty.

(b) Respondent shall have taken and satisfactorily completed a course in professional ethics approved in advance by the Board, receiving an “unconditional pass” grade. A list of some approved courses is available from the Board office.

(c) Respondent shall have taken and completed an evaluation in diagnostic radiology. The evaluation shall be conducted by a Board-approved program deemed by the Board to be equivalent in scope and rigor to the program sponsored by the Center for Personalized Education for Physicians. The evaluation program shall include a clinical portion whereby a physician certified in diagnostic radiology by the American Board of Radiology shall observe respondent’s practical skills in diagnostic radiology. The program shall advise of the adequacy of respondent’s competency in a written report reviewed by the Board of Medical Examiners, and shall make any remedial recommendations deemed necessary for safe and competent practice. Respondent agrees to comply with any such recommendations.

8. Upon resumption of practice during the period of stayed suspension and until further order of the Board, respondent shall practice only as an employee of a medical group or of a licensed health care institution approved by the Board.

9. If remedial or monitoring provisions are deemed appropriate following the evaluation, respondent’s radiology practice shall be supervised by a Board-approved New Jersey-licensed radiologist who is certified in the specialty of diagnostic radiology by the American Board of Radiology. The preceptor/monitor shall not be a friend or relative or anyone with whom respondent has or had a financial relationship of any kind. Respondent shall promptly submit to the Board, with a copy to the prosecuting Deputy Attorney General, a curriculum vitae of the proposed preceptor, along with a signed agreement of the candidate acknowledging the responsibilities incumbent upon the preceptor as set forth herein and agreeing to accept same, and submitting a proposed plan of

preceptorship. Approval of the preceptor/monitor is at the sole discretion of the Board, and shall not be unreasonably withheld.

10. Respondent shall cooperate with the Board-approved preceptor/monitor and shall assure that the preceptor/monitor reviews at least 10% of all diagnostic studies interpreted by respondent each month, and submits quarterly reports to the Board. Respondent shall authorize the preceptor/monitor to make immediate report to the Board regarding work (whether documented or not documented by respondent) which, in the opinion of the preceptor, fails to meet accepted standards of practice and also of any individual matter which is believed to present an imminent peril to the patient or to the public health, safety or welfare. The period of monitoring/preceptorship shall continue for one year after the conclusion of the stayed suspension period. The cost of the preceptor/monitor's services shall be borne by respondent and shall not be passed on to patients/third party payors.

11. Respondent shall provide appropriate releases to any and all persons who are participating in the evaluation and/or supervision program as outlined herein as may be required. Respondent shall make such arrangements with his employer(s) as are necessary in order that all reports, records and other pertinent information (whether or not such patient records and radiographic images are otherwise the property of respondent's employer) shall be provided in a timely manner to the Board, which shall preserve patient confidentiality. Respondent agrees that none of the persons proposed and/or approved as course evaluator, or preceptor/monitor shall have or incur any liability to respondent as a result of their good faith performances of their services.

12. Prior to conclusion of the probation period, respondent shall meet with a Board Committee to discuss his status, including any ongoing remedial measures.

13. Respondent has been made aware that information regarding this matter has been referred to the Division of Criminal Justice. The entry of this Order shall not limit the authority of the Attorney General or of any other person or agency to initiate any further action permitted by law,

whether administrative, civil or criminal, in any court or other forum of competent jurisdiction in connection with any matters coming within that jurisdiction.

14. It is intended by the parties that this Order shall resolve all administrative and license issues with respondent, which were specifically alleged as violations by the Attorney General in the present Administrative Complaint, with regard to his responsibility to the State Board of Medical Examiners, all and solely in connection with Professional Board statutes and regulations.

15. The Disciplinary Directives attached hereto are incorporated in this document.

THIS ORDER IS EFFECTIVE UPON ENTRY.

STATE BOARD OF MEDICAL EXAMINERS

By: Sindy Paul, MD
Sindy Paul, M.D., President

I have read and I understand
the above Order and I agree
to abide by its terms.

Mark D Freilich MD
Mark D. Freilich, M.D.

Witnessed:

Margot Freilich
_____, Esq.
Counsel for Dr. Freilich
MICHAEL SCHOPPMANN
KEA AUGUSTINE CONROY + SCHOPPMANN, PC

whether administrative, civil or criminal, in any court or other forum of competent jurisdiction in connection with any matters coming within that jurisdiction.

14. It is intended by the parties that this Order shall resolve all administrative and license issues with respondent, which were specifically alleged as violations by the Attorney General in the present Administrative Complaint, with regard to his responsibility to the State Board of Medical Examiners, all and solely in connection with Professional Board statutes and regulations.

15. The Disciplinary Directives attached hereto are incorporated in this document.

THIS ORDER IS EFFECTIVE UPON ENTRY.

STATE BOARD OF MEDICAL EXAMINERS

By: _____
Sindy Paul, M.D., President

I have read and I understand
the above Order and I agree
to abide by its terms.

Witnessed:

Mark D. Freilich, M.D.

_____, Esq.
Counsel for Dr. Freilich